

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT PETITION No.15143 of 2019

(Taken up through video conferencing)

Thota Sneha Kiran D/o. Chaitanya Kiran,
Age 19 years, Occ: Student,
Permanent R/o. 7-1-282/C/1/2,
Sanath Nagar, Hyderabad, Telangana,
Presently residing in Vijayawada.

.. Petitioner

versus

Dr. NTR University of Health Sciences,
Rep. by Registrar, Vijayawada,
Andhra Pradesh – 520008 and others.

.. Respondents

Counsel for the petitioner : Mr. D.V. Nagarjuna Babu,
for Mr. Seepani S. Kumar

Counsel for respondent No.1 : Mr. J. Ugranarasimha

Counsel for respondent No.2 : GP for Health, Medical & Family Welfare

Counsel for respondent No.3 : Mr. Vivek Chandra Sekhar S.

ORAL JUDGMENT

(Dt: 01.10.2021)

(per Arup Kumar Goswami, CJ)

Heard Mr. D.V. Nagarjuna Babu, learned counsel, representing Mr. Seepani S. Kumar, learned counsel for the petitioner. Also heard Mr. J. Ugranarasimha, learned counsel appearing for respondent No.1, Mr. Appadhara Reddy, learned Government Pleader for Health, Medical & Family Welfare appearing for respondent No.2, and Mr. Vivek Chandra Sekhar S., learned standing counsel for respondent No.3.

2. Aggrieved by denial of admission into MBBS Course under Economically Weaker Section (for short, 'EWS') quota in the seats meant for the candidates belonging to Osmania University local area for the academic year 2019-2020, the petitioner had filed this writ petition essentially praying for a direction to the respondents to admit her into MBBS Course in Siddhartha Medical College, Vijayawada, in the seats meant for the candidates belonging to Osmania University local area under EWS quota for the academic year 2019-2020. Subsequently, by way of amendment, the prayer for direction for admission in the same College under the aforesaid quota is reiterated for the academic year 2021-2022.

3. The case of the petitioner is that she had appeared in the National Eligibility-cum-Entrance Test (UG) – 2019 for admission into MBBS/BDS course conducted by National Board of Examinations in the month of May, 2019, and by obtaining 479 marks, she had secured All India Rank of 62355 and Category Rank of 33340. As she belongs to Economically Weaker Section, she had made an application to respondent No.1 - Dr. NTR University of Health Sciences, Vijayawada, for admission into MBBS Course under EWS category/reservation for the academic year 2019-2020 in the seats allotted for Competent Authority quota in the State of Andhra Pradesh. On verification of requisite documents, including Income and Asset Certificate for Economically Weaker Sections (for short, 'EWS Certificate') dated 31.05.2019 issued by the Tahsildar, Ameerpet Mandal, Hyderabad, the respondent No.1-University had uploaded the list of eligible candidates for admission under EWS category, wherein the name of the petitioner figured at Sl.No.852 and she stood at 4th place amongst

candidates belonging to Osmania University local region. She had participated in the web-based counselling and had exercised her option for MBBS seat in Siddhartha Government Medical College, Vijayawada. Despite her name figuring in the merit list, subsequently, the respondents did not allot her a seat in the said College, though candidates, such as, the candidates who secured ranks of 91513, 102833 and 188148, whose positions were lower than that of her came to be given admission.

4. The case projected by the petitioner is that only because of the fact that the EWS Certificate produced by her was issued by a Tahsildar not belonging to the Government of Andhra Pradesh, her case was not considered. It is pleaded that the petitioner, being resident of Sanath Nagar, Hyderabad, State of Telangana, Tahsildar of Ameerpet Mandal, Hyderabad, is the competent authority to issue such Certificate and there is no justification for the respondents to insist upon production of a Certificate issued by the Tahsildar of the Government of Andhra Pradesh.

5. Mr. D.V. Nagarjuna Babu, learned counsel appearing for the petitioner, submits that there is no dispute that if the petitioner had submitted an EWS Certificate issued by a Tahsildar of the Government of Andhra Pradesh, she would have been admitted into MBBS Course under EWS quota in Siddhartha Medical College and, therefore, the entitlement of the petitioner for admission under EWS quota into the said College is not an issue to be considered by this Court. It is submitted by him that only because of the fact that the Registrar of respondent No.1-University had issued a Notification dated 30.07.2019 requiring the candidates, whose names find place in the final merit list, to produce EWS Certificate issued by the Tahsildar concerned of the Government of Andhra Pradesh

for the year 2019-2020, the Certificate issued by the Tahsildar of the Government of Telangana was not considered. It is further submitted that G.O.Ms.No.60, Backward Classes Welfare (F) Department, dated 27.07.2019, issued by the Government of Andhra Pradesh, stipulated that persons seeking the benefit of reservation under EWS category shall obtain the necessary EWS Certificate issued by the Tahsildar concerned, which necessarily means the Tahsildar within whose jurisdiction the candidate resides. It is further submitted that to attach sanctity to a Certificate issued by the Tahsildar, the same has to bear true facts and it is not possible for someone residing in the State of Telangana to genuinely and legitimately obtain a Certificate from the Tahsildar of the Government of Andhra Pradesh. It is further submitted that the respondents are relying more on production of a Certificate rather than the authenticity and genuineness of such Certificate which would determine the eligibility or otherwise of the candidate for admission under EWS quota. It is also submitted that there is a reference in the Notification dated 30.07.2019 issued by the Registrar of respondent No.1-University to G.O.Ms.No.60 dated 27.07.2019 and, therefore, when it was noted therein that the aforesaid G.O. has to be followed for the purpose of implementation of 10% reservation for EWS category candidates, it defies rationale or logic as to how the Registrar could have issued a Notification insisting on production of a Certificate issued by a Tahsildar of the Government of Andhra Pradesh only. If that interpretation is given and the production of Certificate of the Tahsildar of State of Andhra Pradesh is insisted upon, the provisions contained in Paragraph 3(2) of the Andhra Pradesh Educational Institutions (Regulation of Admissions)

Order, 1974 (for short, 'the Order of 1974'), will be rendered nugatory. He has further submitted that the petitioner has been grossly wronged by denial of admission under EWS category and in these circumstances, appropriate directions may be issued to the respondent No.1-University to admit the petitioner in the next available course, so that the career of a bright student is not put in jeopardy. He, however, fairly submits that presently, the petitioner is undergoing BDS course.

6. Abiding by the stand taken in the counter-affidavit, Mr. J. Ugranarasimha, learned counsel appearing for respondent No.1-University, has submitted that the Government of Telangana had issued G.O.Ms.47, Health, Medical & Family Welfare (C) Department, dated 21.06.2019, stipulating that for admission of candidates claiming admission under EWS category, Certificate issued by the competent authority of the Government of Telangana would only be accepted at the time of verification. It is in that context, the Registrar of respondent No.1-University had issued the Notification dated 30.07.2019. Referring to the counter-affidavit filed on 14.11.2019 and the additional counter-affidavit filed on 04.04.2021 by the respondent No.1, it is contended by him that when the Notification dated 30.07.2019 was issued by the Registrar clearly demonstrating and indicating in bold letters that only the Certificate issued by the Tahsildar concerned of the Government of Andhra Pradesh would be accepted, the petitioner having not challenged the said Notification and having failed to produce such Certificate in terms of the Notification, insisted upon admission on the basis of the Certificate issued by the Tahsildar of the Government of Telangana and, therefore, no illegality was committed by the University in refusing admission to the

petitioner. He has submitted that in any view of the matter, the admission process for the year 2019-2020 has long been over and, therefore, no case is made out as prayed for by the petitioner to permit her to pursue MBBS course in Siddhartha College now.

7. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. At the outset, it will be appropriate to note that in exercise of powers conferred by Clauses (1) and (2) of Article 371-D of the Constitution of India, the Order of 1974 was made with respect to the State of Andhra Pradesh by the President. To understand the controversy in right perspective, it will be appropriate to take note of the definitions of 'local area', 'local candidate', 'State Government', 'State-wide educational institution', 'State-wide University', which are finding place in Clauses (b), (c), (d), (e) and (f), respectively, of Paragraph 2(1) of the Order of 1974, which read as under:

"2. Interpretation:- (1) In this Order, unless the context otherwise requires:

(b) "local area" in respect of any University of other educational institution, means the local area specified in paragraph 3 of this Order for the purposes of admission to such University or other educational institution;

(c) "local candidate" in relation to any local area, means a candidate who qualifies under paragraph 4 of

this Order as a local candidate in relation to such local area;

(d) "State Government" means the Government of Andhra Pradesh.

(e) "State-wide educational institution" means an educational institution or a department of an educational institution specified in the Schedule to this order;

(f) "State-wide University" means the Andhra Pradesh Agricultural University constituted under the Andhra Pradesh Agricultural University Act, 1963 (A.P. Act 24 of 1963), or the Jawaharlal Nehru Technological University constituted under the Jawaharlal Nehru Technological University Act, 1972 (A.P. Act 16 of 1972)."

9. Paragraph 3 of the Order of 1974 deals with 'Local Area'. Perusal of sub-paragraph (1) of Paragraph 3 would go to show that the part of the State comprising the Districts of Srikakulam, Visakhapatnam, West Godavari, East Godavari, Krishna, Guntur and Prakasam shall be regarded as local area for the purpose of admission to Andhra University, Nagarjuna University and to any other educational institution (other than State-wide University or State-wide educational institution), which is subject to the control of the State Government and is situated in that part.

10. Paragraph 3(2) provides that the part of the State comprising the Districts of Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal shall be regarded as local area for the purpose of admission to Osmania University, Kakatiya University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

11. Pausing here for a moment, it will be relevant to state that the petitioner is a resident of Hyderabad District in the State of Telangana, which comes within the fold of local area for the purpose specified in Paragraph 3(2) as noted above.

12. Paragraph 3(3) of the Order of 1974 provides that the part of the State comprising the Districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore shall be regarded as the local area for the purposes of admission to Sri Venkateswara University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

13. Paragraph 5 of the Order of 1974 deals with reservation in non-State-wide Universities and educational institutions, which reads as under:

“5. Reservation in non-State-wide Universities and educational institutions:- (1) Admission to eighty-five percent of the available seats in every course of

study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide university or a State-wide educational institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat."

14. Paragraph 6 deals with reservation in State-wide Universities and State-wide educational institutions and the same reads as under:

"6. Reservation in State-wide Universities and State-wide educational institutions:- (1) Admissions to eighty-five percent of the available seats in every course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of and allocated among the local candidates in relation to the local areas specified in sub-paragraph (1), sub-

paragraph (2) and sub-paragraph (3) of paragraph 3, in the ratio of 42:36:22 respectively:

Provided that this sub-paragraph shall not apply in relation to any course of study in which the total number of available seats does not exceed three.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of the local candidates, any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat:

(3) While allocating under sub-paragraph (1) the reserved seats among the local candidates in relation to different local areas, fractions of a seat shall be adjusted by counting the greatest fractions as one and, if necessary, also the greater of the remaining fractions as another; and, where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot:

Provided that there shall be at least one seat allocated for the local candidates in respect of each local area.”

15. In the Schedule [vide Paragraph 2(e)] to the Order of 1974, State-wide Educational Institutions which are subject to the control of the State

Government are specified. Siddhartha Medical College, Vijayawada, into which the petitioner claims admission, finds place at Serial No.12 of the said Schedule.

16. Paragraph 6 would indicate that 85% of the available seats in every course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of and allocated among the local candidates in relation to the local areas specified in subparagraphs (1), (2) and (3) of paragraph 3 in the ratio of 42:36:22 respectively.

17. It is on the basis of the aforesaid reservation, the petitioner claims that she is entitled to be considered for admission within the 36% quota in the respondent No.1-University and more particularly, in Siddhartha Medical College, Vijayawada, she being a local area candidate of Osmania University.

18. Having laid down the preface, it will be appropriate to consider the controversy which has denied the petitioner a seat in the aforesaid College.

19. In order to regulate the implementation of 10% reservation to the candidates belonging to EWS category for admission into educational institutions for the academic year 2019-2020, the Government of Andhra Pradesh had issued G.O.Ms.No.60, Backward Classes Welfare (F) Department, dated 27.07.2019.

20. Paragraph 9 of the said G.O.Ms.No.60 dated 27.07.2019 is relevant for the purpose of the present case and, therefore, the same is reproduced hereunder:

"9. In view of the above, Government hereby decided to fill up the EWS quota of supernumerary seats in Higher Educational Institutions in accordance with 103rd Constitutional Amendment Act, 2019 and the guidelines issued by Govt., of India vide Office Memorandum F.No.36039/1/2019-Estt (Res.) Dated: 19.01.2019. The guidelines relevant for current academic year 2019-2020, in regard to the subject matter consistent with 103rd Constitutional Amendment, would read as under:

- i. All Castes which are not covered under any reservation category (SC/ST/BC) are entitled to avail of the reservation facility under EWS Category.
- ii. The students admitted under EWS Category will be adjusted against the 10 percent of the sanctioned seats granted additionally, as is followed by the Government of India. However, 1/3rd (33 1/3) of the seats enhanced for the purpose of accommodating the EWS Category students shall be earmarked to women among them.
- iii. The model format of the EWS Certificate prescribed by Government of India in Annexure-I vide their O.M.No.36039/1/2019-Estt. (Res),

Dated: 31-1-2019 shall be followed along with the conditions referred in para 2 above.

- iv. The persons seeking the benefit of reservation under EWS category shall obtain the necessary EWS Certificate issued by the Tahsildar concerned.
- v. The eligibility conditions for a person to avail of the facility of EWS reservation are the same as fixed by the Government of India as referred in Para 2 above.”

21. Thus, as per Paragraph 9(iv) of G.O.Ms.No.60, a person seeking the benefit of reservation under EWS category is required to obtain necessary EWS Certificate from the Tahsildar concerned.

22. There is another Government Order, i.e., G.O.Ms.No.39, Higher Education (E.C) Department, dated 30.07.2019, which was issued three days after the earlier guidelines were issued vide G.O.Ms.No.60 dated 27.07.2019. Essentially, G.O.Ms.No.39 extracts the relevant guidelines which are already noted in the preceding paragraph, namely, that the persons seeking the benefit of reservation under EWS category shall obtain the necessary EWS certificate issued by the Tahsildar concerned.

23. On 29.07.2019, the Registrar of respondent No.1-University sent a communication to the Principal Secretary to Government, Health, Medical & Family Welfare Department, Andhra Pradesh, requesting him to issue necessary guidelines for allotment of surrendered seats (All India Quota) and also sanctioned seats under EWS quota. Though Mr. J. Ugranarasimha has stated that the aforesaid communication was

issued in consonance with the stand taken by the Government of Telangana, there is no reference in the aforesaid communication to the stand taken by the Government of Telangana. In the Notification dated 30.07.2019 issued by the Registrar of respondent No.1-University, it was stipulated as under:

“Therefore, all the candidates **who are present in the final merit list** for admission into **Competent Authority Quota** are hereby informed to attend for verification of **original “Income and Asset Certificate for Economically Weaker Sections” issued by the Tahsildar concerned of Government of AP for the year 2019-20** for confirmation of eligibility for 10% reservation under Economically Weaker Sections in the specified Government colleges as per the schedule given below at Dr. NTR University of Health Sciences, Vijayawada.”

24. When it is the consistent stand of the Government of Andhra Pradesh that the candidates claiming benefit of reservation under EWS Category must produce the required certificate issued by the Tahsildar concerned, the Registrar of respondent No.1-University, on his own, had imposed a restriction to the effect that the candidates aspiring for a seat under EWS Category must necessarily produce a certificate issued by a Tahsildar of the Government of Andhra Pradesh only, ignoring the fact that the Tahsildar within whose jurisdiction the particular candidate resides will be the competent authority to issue such a certificate in favour of that candidate. It is not understood as to how a Tahsildar in

the State of Andhra Pradesh can legitimately give a certificate to a person residing in the State of Telangana. The petitioner could not satisfy such condition for good reasons and as she belongs to the State of Telangana, she had produced a certificate of Tahsildar within whose jurisdiction she resides.

25. The argument advanced by Mr. J. Ugranarasimha that the petitioner did not challenge the Notification dated 30.07.2019 issued by the Registrar and further did not produce the certificate as insisted upon in the said Notification and is, therefore, not entitled to a seat under EWS quota, cannot be countenanced. Though no challenge was made to the Notification dated 30.07.2019, it is to be noted that this Court exercises extraordinary powers under Article 226 of the Constitution of India and the technicalities will not bind the writ Court where the cause of justice demands. This Court can always mould the relief. When the Government issued Orders categorically stating that the EWS Certificate shall be obtained from the concerned Tahsildar, meaning thereby, the Tahsildar within whose jurisdiction the candidate resides, there was no justification for the Registrar to modify such requirement and impose a restriction on his own. The learned counsel appearing for the University is unable to show under what authority the Registrar had issued the said Notification. We are of the considered opinion that the action of the Registrar of respondent No.1-University in insisting upon production of a Certificate issued by the Tahsildar of Government of Andhra Pradesh only, overriding the instructions given by the Government, was wholly uncalled for and by such arbitrary action of the Registrar, the petitioner was unfairly treated and her right to obtain a seat in MBBS course under EWS category was

unjustifiably denied, resulting in violation of Article 14 of the Constitution of India.

26. Having arrived at the aforesaid conclusion, we have to determine as to what kind of relief the petitioner will be entitled to in the attending facts and circumstances of the case.

27. Mr. Vivek Chandra Sekhar, learned counsel for the National Medical Commission, submits that in view of the decision of the Hon'ble Supreme Court in the case of ***National Medical Commission v. Mothukuru Sriyah Koumudi and others (Civil Appeal No.3940 of 2020 dated 07.12.2020)***, it is now permissible in given circumstances to allot a seat to a candidate in the next academic year. He, however, submits that if the petitioner is to be allotted a seat, the same has to be on the basis of curtailing the seats available for the ensuing year and not by creation of supernumerary seats. He also submits that if admission has to be given now, such admission has to be on the basis of the marks obtained in NEET-2021.

28. Mr. D.V. Nagarjuna Babu contends that there is no indication in the aforesaid judgment that a seat has to be curtailed in the ensuing year and, therefore, supernumerary seats can be created in order to do justice to the petitioner.

29. In ***National Medical Commission*** (supra), the Hon'ble Supreme Court had taken note of the observations made in ***S. Krishna Sradha v. State of Andhra Pradesh***, reported in ***(2019) SCC Online SC 1609***, wherein the Hon'ble Supreme Court had an occasion to consider the nature of relief that can be granted to a student after the last date of

admissions in case it was found that the said candidate was denied admission illegally. The observations so made in the case of ***S. Krishna Sradha*** (supra) are as follows:

“33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule

prescribed - 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus

affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutive remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

30. The contention of Mr. Vivek Chandra Sekhar that if admission has to be given to the petitioner, such admission should be on the basis of the marks obtained in NEET-2021, is without any foundation. If the petitioner had been denied admission for no fault on her part and the Court finds that a direction is called for to give admission, it cannot be countenanced that she has to again appear for the entrance examination to be eligible for admission.

31. In the attending facts and circumstances of the case, we are of the opinion that the decision rendered in ***S. Krishna Sradha*** (supra) is applicable in the instant case and, as such, we deem it appropriate to direct the respondent authorities to admit the petitioner into MBBS Course in Siddhartha Medical College, Vijayawada, in the academic year 2021-22, if necessary, by increasing a seat for such Course.

32. The writ petition is allowed and disposed of with the aforesaid direction. No costs. Pending miscellaneous petitions, if any, shall stand closed.

ARUP KUMAR GOSWAMI, CJ

NINALA JAYASURYA, J

IBL